CHARACTER AND FUNCTION OF SHELTERED WORKSHOPS FOR THE BLIND

by

Jacobus tenBroek

HV1711
T

M.C. MIGEL LIBRARY
AMERICAN PRINTING
HOUSE FOR THE BLIND

HV1711
T
copy 4

CHARACTER AND FUNCTION OF SHELTERED WORKSHOPS FOR THE BLIND:

A REVIEW OF STATE STATUTES

By

Professor Jacobus tenBroek
President, National Federation of the Blind

June, 1960

The institution of the sheltered workshop, for over a century an inconspicuous feature of the American welfare scene, has recently emerged from its obscurity to become the storm-center of one of the liveliest controversies in the entire field of social work and public welfare. At the heart of the controversy is a fundamental disagreement over the proper function and future role of the sheltered shop. One viewpoint holds that a proper role of the shops is that of providing work evaluation, determination of abilities, and the development of work tolerance on the part of disabled persons -- along with vocational training itself -- as part of the process of vocational rehabilitation. More recently, doctors and health officials have begun to campaign for the use of the workshop as a medical facility for restorative, adjustive and pre-vocational services centering around the principle of work therapy. Finally, the oldest and perhaps still the most widely held viewpoint is that which regards the workshop as a place of remunerative employment for disabled individuals.

Two of these approaches to the sheltered workshop find support for their arguments in federal law and administrative rulings. The proponents of the vocational adjustment and training function point out that,

---

Grateful acknowledgement for assistance in the preparation of this article is made to Paul Kirton, Dr. Floyd Matson, and Richard Moneymaker.

since the passage of the Vocational Rehabilitation Act[1] in 1954, sheltered workshops have been recognized as a legitimate training adjunct of the federal-state vocational rehabilitation program; and in addition they may now cite the majority ruling[2] of the National Labor Relations Board, handed down in March of this year, that rehabilitation is the essential function of the workshop.

The defenders of the employment status of the workshop may demonstrate that, even within the Vocational Rehabilitation Act, "sheltered workshop" is defined as primarily a place which provides remunerative employment,[3] and that in fact rehabilitation administrators frequently regard the placement of their clients in such shops as sufficient to meet the remunerative placement requirements which are the ultimate objective of vocational rehabilitation programs. Moreover, the employment argument finds further support in the fact that the very exemption of sheltered workshops from the minimum wage provisions of the Fair Labor Standards Act[4] was granted on the premise that they are places of employment.

---

[1] 29 U.S.C. § 41(a)(8)(1958).

[2] Sheltered Workshops of San Diego, Inc. vs. United Association of Handicapped, 126 N.L.R.B. No. 119 (Mar. 4, 1960).

[3] 29 U.S.C. § 41(d)(1958).

[4] 29 U.S.C. § 214(1958): "The administrator, to the extent necessary in order to prevent the curtailment of opportunities for employment, shall by regulations or by orders provide for:

1. The employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificate issued pursuant to regulations of the administrator, at such wages lower than the minimum wage applicable under § 206 of this Title, subject to the limitations as to time, number, proportion, and length of service as the administrator shall prescribe;
2. The employment of individuals whose earning capacity is impaired by age, or physical or mental deficiency or injury, under special certificate issued by the administrator, at such wages lower than the minimum wage applicable under § 206 of this Title, and for such period as shall be fixed in such certificate."

To some extent the issues raised by these differences of viewpoint are theoretical in nature, involving such questions as: What are the proper goals of workshops? What is their greatest usefulness as instruments of welfare?

To a larger extent, perhaps, the issues are practical: What in actual fact are the functions of such shops? What are the prevailing conditions of training, work, and release?

On both the theoretical and practical levels, disagreement is widespread and often acrimonious. Insofar as they are theoretical, the questions raised by the workshop can only be settled by reference to policies and goals. Insofar as they are practical, such questions can only be answered by reference to fact.

Unfortunately, some of those who are in a position to assemble and disseminate the facts have not done so. For example, the Sheltered Workshop Committee within the Department of Labor has not chosen to fulfill its duties in these areas.

One important source of information concerning sheltered workshops, however, is available to all. It consists of the statutes of the various states governing their publicly operated sheltered shops. Anyone with access to a law library can look at these statutes. No doubt they yield their information by means of complicated sentences and technical language, but they do yield it. That information is, in large measure, the content of the pages to follow.

In particular, we shall seek to identify the salient characteristics and purposes of the workshops as specified in these laws -- with reference to the objectives they purport to serve, the nature of their opportunities and undertakings, the attitudes they reflect toward those who participate in them, and their working conditions and social atmosphere.

The principal question to keep in mind through these pages is: What light do they shed upon the basic issue of the proper role and function of sheltered workshops within a system of welfare? Do they distinguish between -- or do they merely confuse and commingle -- the separate functions of (1) a vocational evaluation, adjustment and training center, (2) a therapeutic facility, and (3) a place of remunerative employment?

General Background.

Sheltered workshops, as such, first arose in America over a

century ago as an outgrowth of the special schools for the blind whose curricula concentrated upon the provision of simple forms of vocational training -- in such limited and manual skills as weaving, knitting and chair caning, as well as in music and similar arts. At first it was the hope of the educators that "the blind, with proper instruction, will be able to maintain themselves free of charge from their friends or the State."[5] Unfortunately, however, nothing had been done to persuade society of the capacities of these blind trainees; and before long, as one report put it, "Our graduates began to return to us, representing the embarrassment of their condition abroad, and soliciting employment at our hands."[6] Thus were born the sheltered workshops -- as segregated places of permanent employment for those regarded by society (if not by themselves and their protectors) as "unemployable."

Although sheltered workshops emerged in their modern form a century ago, their ancestry may be traced at least to the middle ages. It is possible to distinguish four separate historical associations from which the contemporary workshops derive: namely, those of the workhouse, the church, the hospital, and the school. Since the traces of this long and complicated heritage are still to be seen in many sheltered workshops of today, it is instructive to glance briefly at the sources and character of these various influences.

The oldest influence of all is that which had its origin in religious protection of the disabled. "Since the Church was the first charitable organization," a federal official has written, "inevitably some lines of the workshop movement have strong religious ties. When the indigent, the physically disabled and the mentally different were herded into the asylums of the 1700's, they were being brought together not to ameliorate their condition but simply to get them off the street."[7] A primary concern of the church for its disabled and

---

[5] Report of the Iowa School for the Blind, 1854, quoted in Harry Best, Blindness and the Blind in the United States (New York: Macmillan Co., 1934), p. 474.

[6] Ibid., p. 476.

[7] Edward L. Chouinard (Rehabilitation Specialist, Office of Vocational Rehabilitation, Department of Health, Education, and Welfare), "Sheltered Workshops -- Past and Present," paper read at Fifth Atlantic City Rehabilitation Conference of the National Rehabilitation Association (June, 1957), mimeo., p. 4.

indigent wards was with their souls as well as with their bodies -- with spiritual redemption and moral uplift perhaps more than with vocational rehabilitation and physical restoration as understood today. Among many privately operated workshops today, such as those of the Salvation Army and the Society of St. Vincent de Paul, these are still the principal goals of workshop activity. The Volunteers of America (an offshoot of the Salvation Army) currently sponsors at least 70 such workshops; while perhaps the most successful of all the mission or church-sponsored workshop chains is that of the Goodwill Industries, founded by a Methodist minister in 1905, which by 1957 controlled 120 shops throughout the country.

A corollary line of development from which the contemporary workshop has emerged is that of the medieval and early modern hospital which, like the asylum, was generally under church auspices, but may be distinguished in terms of its specific function. European hospitals of the early sixteenth century were described by one observer as "those places where the sick are fed and cared for, where a certain number of paupers is supported, where boys and girls are reared, where abandoned infants are nourished, where the insane are confined, and where the blind dwell." [8] The purpose of the hospital was primarily to care for the sick and totally disabled, but in the bedlam created by its motley population there were also the rudiments of school, nursery, almshouse, and insane asylum. Those present-day workshops which incorporate the provision of medical and therapeutic services therefore may be seen as the outcome of a line of development reaching back to the medieval hospital and extending through the American county hospitals of more recent times -- institutions which also sought to fulfill the "double function" of healing the sick and employing the handicapped. [9]

Another significant precursor of the sheltered workshop was the workhouse or almshouse, which evolved as an institution of work relief accompanying the poor laws of the sixteenth and seventeenth centuries. For present purposes the chief importance of the workhouse

---

[8] Quoted in Karl de Schweinitz, England's Road to Social Security (Philadelphia: University of Pennsylvania Press, 1943), p. 31.

[9] Cf. Jacobus tenBroek and Floyd W. Matson, Hope Deferred: Public Welfare and the Blind (Berkeley: University of California Press, 1959), p. 259.

was that it was designed, not primarily for the ill or handicapped, but for the able-bodied poor. The workhouse provided an institutionalized form of poor relief; and in keeping with Elizabethan assumptions of the characterological causes of poverty, it was made as disagreeable as possible and its wages held to a bare minimum above starvation so that not many would willingly seek admission or contentedly remain. The gospel of work as the means of salvation (and, conversely, of idleness as the route to damnation) virtually converted the almshouse into a forced-labor camp; indeed, the distinction between workhouse and jailhouse was often difficult to discern.

Finally, as indicated above, the sheltered workshops grew up as adjuncts of the special schools for the blind established in the nineteenth century. However, it is significant that these schools soon deliberately severed their connection with the shops they had themselves created, as it became apparent that the functions of education and employment could not feasibly be mixed within the same program. Thereafter, the workshops came to be operated independently of educational and custodial institutions.

The historical development of modern welfare philosophy has been one of increasing recognition of the necessary distinctions and incompatibilities among these several emphases and approaches to the problem of disability. Some among them -- notably that of the workhouse and almshouse, and possibly also to some extent that of the religious mission -- have come to be recognized as anachronisms. Others, such as the vocational training emphasis of the early schools and the sheltered employment conception which succeeded it, still retain some support in welfare theory and policy. But it is clear that the direction of progress has been completely away from the primitive notion of an encompassing "bedlam" in which all the sick and disabled, rejected and despised members of society would be thrown together -- and in which the various and dissimilar functions of the church, the school, the factory, the hospital and the prison would be simultaneously carried on.

It remains to see whether the statutes of the states governing their publicly operated sheltered workshops have kept pace with this clear direction of progress.

Conditions of Labor.

State employees generally are excluded from compulsory coverage of unemployment compensation under the Internal Revenue

Code of 1954.[10] The Code also exempts charitable organizations, including privately operated workshops, from compulsory coverage.[11] Such states as Oregon,[12] California,[13] Washington,[14] and Wisconsin[15] have taken legislative and administrative steps to extend the coverage of unemployment compensation to some or all of the workers in their state-operated sheltered workshops. With respect to privately operated workshops, Hawaii is the only one of 32 states having such shops to take legislative action changing their status. It did so by dropping the exemptions of charitable organizations from unemployment compensation coverage.[16] In short, the vast majority of employees of sheltered workshops (both public and private) throughout the country are without the protection of unemployment compensation laws.

The workers in sheltered shops face an additional deprivation. The Labor Management Relations Act excludes the states and their political subdivisions from the definition of "employer" for purposes

---

[10] Int. Rev. Code of 1954, sec. 3121(b)(7).

[11] Int. Rev. Code of 1954, sec. 3121(b)(8)(B).

[12] This results from State Attorney General's ruling No. 4860 (May 9, 1960).

[13] Calif. Welf. & Inst. Code, sec. 3306.1 (1959): "Blind persons and other physically handicapped persons employed by California Industries for the Blind shall be deemed to be employees of the State for the purposes of unemployment compensation insurance and unemployment disability insurance." The 1959 legislature also extended to the California workers workmen's compensation (Welf. & Inst. Code, sec. 3306) and Old Age and Survivors social insurance benefits (Welf. & Inst. Code, sec. 332).

[14] Rev. Code of Wash., sec. 50.04.200(1951) - state may elect to extend coverage to any group of individuals within its employ.

[15] Wisc. Stat. Ann., secs. 108.02(4)(f), 108.02(5)(g)(7) - state may elect to become employer within definitions of unemployment compensation act. Also any charitable organization may so elect.

[16] Hawaii Empl. Sec. Law, series D-185; Session Laws of Hawaii 1939, as amended; Hawaii Rev. Laws, tit. 11, sec. 93-7(1955).

of collective bargaining.[17] A recent ruling of the National Labor Relations Board withheld the collective bargaining provisions of the Act from privately operated sheltered shops. This ruling was handed down in the case of Sheltered Workshops of San Diego, Inc. vs. United Association of handicapped.[18] By a majority decision of three to two, the National Labor Relations Board refused to assert jurisdiction. The ground taken was that "the Workshop's purposes are directed entirely toward rehabilitation of unemployable persons" and that "its commercial activities should be viewed only as a means to that end." The chief arguments against this ruling were forcefully stated by the dissenting opinion of the two minority members of the National Labor Relations Board: "Why then does the majority find that it would not effectuate the purposes of the Act to assert jurisdiction here? It does so because the Workshop's rehabilitation work benefits the entire community. We do not, of course, deny that this is so, but we reject the implicit corollary that a non-profit organization engaging in socially beneficial activities therefore owes its employees less than other employers do. The right of employees to select a representative and to bargain with their employer concerning their grievances and work conditions should not be so lightly disregarded. The majority has balanced the Workshop's commercial activities against its rehabilitation program and has decided that the latter outweighs the former. We would balance the Workshop's total program, commercial and rehabilitative, against the rights of these unfortunate and disabled employees, and would find that the latter is equally important."

The greatest deprivation to workers in sheltered workshops is the exemption of these shops from the minimum wage provisions of the

---

[17] 29 U.S.C., § 152(2)(1958). "The term 'employer' includes any person acting as an agent for an employer, directly or indirectly, but shall not include the United States or any wholly owned government corporation, or any Federal Reserve Bank, or any state or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

[18] 126 N.L.R.B. No. 119(Mar. 4, 1960).

Fair Labor Standards Act.[19] With reference to the blind alone, at least 85 of the more than 100 sheltered shops primarily employing sightless workers hold certificates of exemption issued by the Department of Labor under Section 214 of the Act. The average minimum of such exemptions is 53 cents per hour -- as opposed to the national minimum wage of $1.00 per hour for industrial labor.[20] About 100 blind workers in sheltered shops receive a minimum wage below 40 cents per hour.[21] Given the generally acknowledged fact that blind persons have special additional expenses incident to their blindness, exemption from minimum wage guarantees is thus a fact of vital significance to workers in sheltered shops.

It is such considerations as these which have led a special subcommittee of the House Committee on Ways and Means -- reporting in March of this year on the social security program of disability insurance -- to question whether employment in sheltered workshops should properly be regarded as substantial gainful activity. The subcommittee concluded that wage conditions in the shops were generally so deplorable that it should be a rare case in which an employee of a sheltered workshop may be considered to be engaged in substantial gainful activity and thus held ineligible for disability insurance payments. (Administration of Social Security Disability Program, Preliminary Report to the Committee on Ways and Means, submitted by the Subcommittee on the Administration of the Social Security Laws, March 11, 1960, page 22.)

With but few exceptions, it may be said in summary, the employees of sheltered workshops, both publicly and privately operated, (1) do not possess the benefits of unemployment compensation; (2) they do not possess the benefits of workmen's compensation; (3) they do not possess the benefits of Old Age Survivors and Disability Insurance under the Social Security Program; (4) the privileges of collective bargaining under the National Labor Relations Act are withheld from

---

[19] See footnote 4, supra.

[20] This is the 1958 figure supplied by the Department of Labor in a report from its Wage and Hour and Public Contracts Divisions (March, 1958).

[21] Letter from James T. O'Connell, Acting Secretary of Labor, to the Hon. Graham A. Barden, Chairman, Committee on Education and Labor, U.S. House of Representatives, April 27, 1960.

them; and (5) they are exempted from the minimum wage guarantees of the Fair Labor Standards Act. In such circumstances of enforced poverty, insecurity, and discriminatory withholding of privileges and denial of rights, can it be contended that the sheltered shops rehabilitate or supply remunerative employment for their disabled workers?

The State Statutes.

Purposes of Workshops. We may now turn our attention to the specific statutory provisions of the states governing their publicly operated workshops. Of the 28 states which operate their own shops[22] 24[23] have spelled out their authority in statutes of varying detail.

---

[22] Alabama, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, New Mexico, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Utah, Virginia, Vermont, Washington, Wisconsin.

[23]

Alabama	Code of Ala., tit. 52, § 534(4a)-(a)(1955).
Arizona	Ariz. Rev. Stat. Ann., §15-1181(1956).
California	Calif. Welf. & Inst. Code, § 3300.1 (1959).
Colorado	Colo. Stat. Ann., § 16-4-4-(3)(1957).
Connecticut	Gen. Stat. of Conn., Ch. 174 § 10-301(1958).
Georgia	Code of Ga. Ann., tit. 99 § 99-801(1955).
Illinois	Ill. Ann. Stat., tit. 23, §1401(Smith-Hurd 1959).
Indiana	Ind. Stat. Ann., § 22-827(Burns 1950).
Kansas	Kan. Gen. Stat., Art. 11, § 76-1112(1957 supp).
Kentucky	Ky. Rev. Stat., § 163.036(1958).
Maryland	Ann. Code of Md., Art. 30, § 4(1957).
Massachusetts	Ann. Laws of Mass., Ch. 69, § 14(1953).
Michigan	Mich. Comp. Laws, 393.201(1948).
Mississippi	Miss. Code Ann., tit. 26, § 7265(1953).
New Mexico	N.M. Stat., § 73-23-1(1953).
North Carolina	Gen. Stat. of N. Car., § 111-6(1952).
Ohio	Ohio Rev. Code, § 5109.07(Baldwin 1958).
Oregon	Ore. Rev. Stat., § 346.190(1957).
Tennessee	Tenn. Code Ann., § 49-3022(1956).
Utah	Utah Code Ann., § 64-3-18(1953).
Virginia	Code of Va., § 63-167(1950).
Washington	Rev. Code of Wash., § 74.16.180-(3)(1957).
Wisconsin	Wisc. Stat. Ann., § 47.05-(2)-(h)(West 1957).
Hawaii	Hawaii Rev. Laws, tit. 14, § 109-9(1957).

Eleven[24] other states have authorization to operate workshops but thus far have not chosen to exercise their authority. There are 19 states[25] which have no private workshops. In summary, there are 17 states (and the District of Columbia) which have only privately operated workshops;[26] 14 states which have both state and private shops,[27] and 14 states with public shops only.[28] Five states have neither public nor private shops.[29]

What are the purposes of the state-operated workshops, as set

---

[24]

Alaska	Alaska Comp. Laws, § 37-9-8-(2)(1958).
Arkansas	Ark. Stat. Ann., § 80-2546(1957).
Florida	Fla. Stat. Ann., § 409.26-(5)(1957).
Iowa	Iowa Code Ann., § 93.6-5(1958)
Missouri	Mo. Rev. Stat., § 209.010(1949).
New York	N. Y. Unconsol. Laws, § 8776(McKinney 1953).
Pennsylvania	Penna. Stat. Ann., tit. 71, § 610-(m)(Purdom 1958).
Rhode Island	Laws of R.I., § 40-11-2(1956).
Texas	Stat. of Tex. Ann., § 3207a-(2)(Vernon 1952).
West Virginia	W. Va. Code, § 1872(15)(1955).
Wyoming	Wyo. Stat., § 21-305(c)(1957).

[25] Alaska, Arizona, Colorado, Connecticut, Delaware, Idaho, Kentucky, Maryland, Michigan, Mississippi, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Vermont, Virginia, Hawaii.

[26] Arkansas, Florida, Iowa, Louisiana, Maine, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, Oklahoma, Pennsylvania, Rhode Island, Texas, West Virginia, Wyoming, District of Columbia.

[27] Alabama, California, Georgia, Illinois, Indiana, Kansas, Massachusetts, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, Washington, Wisconsin.

[28] Arizona, Colorado, Connecticut, Delaware, Kentucky, Maryland, Michigan, Mississippi, New Mexico, Oregon, Utah, Vermont, Virginia, and Hawaii.

[29] Alaska, Idaho, Montana, North Dakota, South Dakota.

forth in the statutes? Nine states [30] say that their shops are for the purposes both of employment and of training or instruction. Four states [31] say that the purpose of their shops is that of training. Seventeen states [32] stress the purpose as that of employment. (In seven of the latter states, the workshops are presently inoperative.)[33] In eight states [34] the statutes give no purpose; of these two do not operate

---

[30]

Alabama	Code of Ala., tit. 52, § 534(4a)-(a)(1955).
Arizona	Ariz. Rev. Stat. Ann., § 15-1182-A(1956).
Colorado	Colo. Rev. Stat., § 16-4-4(1957).
Illinois	Ill. Ann. Stat., tit. 23, § 1401(Smith-Hurd 1959).
Kentucky	Ky. Rev. Stat., § 163.036(1958).
Massachusetts	Ann. Laws of Mass., Ch. 69, § 14(1953).
Michigan	Mich. Comp. Laws, § 393.201(1948).
Missouri	Mo. Rev. Stat., § 209.010(1949).
New Mexico	N.M. Stat., § 73-23-1(1953).

[31]

Connecticut	Gen. Stat. of Conn., Ch. 174, § 10-301(1958).
Utah	Utah Code Ann., § 64-3-18(1953).
Washington	Rev. Code of Wash., § 74.16.180-(3)(1957).
Wisconsin	Wisc. Stat. Ann., § 47.06(West 1957).

[32]

Alaska	Alaska Comp. Laws, § 37-9-5-(4)(supp. 1958).
Arkansas	Ark. Stat. Ann., § 80-2542(m)(1957).
California	Calif. Welf. & Inst. Code, § 3300(1959).
Florida	Fla. Stat., § 409.26-5(1957).
Georgia	Ga. Code Ann., § 99-801(1948).
Indiana	Ind. Stat. Ann., § 22.827(Burns 1956).
Iowa	Iowa Code, § 936-(5)(1958).
New York	N.Y. Unconsol. Laws, § 8776(McKinney 1953).
North Carolina	Gen. Stat. of N.C., § 111-6(1952).
Ohio	Ohio Rev. Code, § 5109.07(Baldwin 1958).
Oregon	Ore. Rev. Stat., § 346.190(1957).
Pennsylvania	Penna. Stat. Ann., tit. 71, § 610-(m)(Purdom 1958).
Tennessee	Tenn. Code Ann., § 14-626-j(1959).
Virginia	Code of Va., § 63.167(1950).
West Virginia	W. Va. Code, § 1872(14)-(2)(1955).
Wyoming	Wyo. Stat., § 21-303(1957).
Hawaii	Hawaii Rev. Laws, tit. 14, § 109-9(1957).

[33] Arkansas, Florida, Iowa, New York, Pennsylvania, West Virginia, Wyoming.

[34] Delaware, Kansas, Maryland, Mississippi, New Jersey, Rhode Island, South Carolina, Texas.

shops at all,[35] and four others[36] fail even to mention their workshops in relevant statutes. Since the federal statutes mention the function of employment[37] but not that of training in the definition of workshops, it would appear that the nine states which stipulate both as purposes have expanded their programs beyond the requirements of the federal authority. The four states which specify only training as the purpose of their workshops, rather than employment,[38] fit their statutory description only if placements in their shops do not continue beyond a reasonable length of time.

The statutes of Alabama provide:[39] "... for training and employing blind and visually handicapped persons in trades and occupations suited to their abilities for the purpose of producing brooms, mops, sheets, mattresses and other items used by departments, agencies and institutions of the state of Alabama and its political subdivisions." Alabama has sought to use its training and employment facilities as a source of supply for goods needed by the state in its operation of certain governmental functions. It thus becomes important to know whether the primary objective is that of maintaining state functions, of providing employment to the handicapped, or of vocational training toward the end of placing disabled workers in normal private industry. The statute gives no answer to these questions.

The statutes of Georgia provide[40] that "the purpose of such factory is to furnish those citizens of Georgia who are blind or who have no more than 10 percent vision [1] a means of supporting themselves"; (2) "an opportunity for those mentally gifted to earn a living by working short shifts"; (3) "develop their talents for literature, poetry, music or otherwise"; (4) "furnish a home to such workers as desire it, thereby relieving them from the degradation of paupery or

---

[35] Rhode Island, Texas.

[36] Delaware, New Jersey, South Carolina, Vermont.

[37] 29 U.S.C., § 41(d)(1958).

[38] See footnote 31, supra.

[39] Ala. Code, § 52-534(4a)-(a)(1955).

[40] Ga. Code Ann., § 99-802(1948).

beggary"; and (5) "relieve counties of the expense of their upkeep in poor houses, at a minimum, if any, cost to the state." Thus the purposes are multiple, not to say contradictory: means of support; a home; relieve counties of poor house expense; short-shift livelihood for the mentally gifted; academic education in the fine arts; a factory. This statute was passed in 1937.

In Michigan the statutes provide[41] "an institution for the training, care and employment of adult blind persons of good moral character." It shall have "the name and style of the 'Michigan Employment Institution for the Blind.' The . . . Board of Trustees [shall have the] power . . . to receive all donations and appropriations of money or property made for the purpose of promoting the industrial, intellectual, physical, or general welfare of the blind or of any class of blind persons."[42] Again:[43] The "Board of Trustees shall afford adult blind residents of this state, of good moral character who are in suitable physical and mental condition for receiving instructions, and are in need thereof, thorough instruction and training in such art, trades, callings, and branches of learning as will, in the opinion of [the] Board, best serve to fit such persons to earn, in whole, or in part, their own support." The persons attending are named and styled "students, apprentices, wards, wage workers, and other inmates."[44] The Board shall "establish a system of government" and "make . . . regulations . . . for the reception, supervision and control of the lawful beneficiaries or employees, for enforcing discipline, for imparting instruction, for preserving health, and generally for the proper physical, intellectual, moral, social and industrial training and welfare of the inmates and beneficiaries. . . ." The Board[45] "shall have power to dismiss and discharge any inmate or beneficiary . . . whenever they shall deem it advisable so to do on account of persistent disobedience, immoral conduct or other sufficient cause, or in consequence of such person

---

[41] Mich. Comp. Laws, § 393.201(1948).

[42] Ibid., § 393.208(1948).

[43] Ibid., § 393.211(1948).

[44] Ibid., § 393.210(1948).

[45] Ibid., § 393.215(1948).

having completed the course of training or otherwise having accomplished the purpose for which he or she may have been admitted to said institution." The Board is to prescribe "the hours of labor to [be] required of workers in the several departments thereof, with the rates of compensation to be allowed for the labor or services of proficient workers, and the charges to be required of such workers or the inmates for board, lodging, washing, and other care or services rendered them at the expense of the institution."

The Michigan purposes are, thus, even more numerous and encompassing than those of Georgia: employment for apprentices and wage workers at wages and under conditions to be prescribed at the discretion of the Board; instruction and training in such arts, trades, callings and branches of learning as will fit them for partial or total self-support; instruction for students in proper physical, intellectual, and social subjects; instruction in morals for all, even though they must be of good moral character to be admitted; provision of care for wards and inmates; promotion of the industrial, intellectual, physical and general welfare of the blind whether in or out of the institution; enforcing discipline and dismissing for persistent disobedience, immoral conduct, or other causes.

Only nine states[46] specify in their statutes as an objective of the program that shop workers will be encouraged to attain a status of self-support. Twenty-six statutes refer to employment in the shop as among the purposes.[47]

Wages.

The problems raised by these multiple and conflicting purposes

---

[46] California — Calif. Welf. & Inst. Code, § 3300(1959).
Colorado — Colo. Rev. Stat., § 16-4-1(1957).
Connecticut — Gen. Stat. of Conn., Ch. 174, § 10-301(1958).
Georgia — Ga. Code Ann., § 99-801(1948).
Illinois — Ill. Ann. Stat., tit. 23, § 1401(Smith-Hurd 1959).
Michigan — Mich. Comp. Laws, § 393.211(1948).
Washington — Rev. Code of Wash., § 74.16.180-(3)(1957).
Wisconsin — Wisc. Stat. Ann., § 47.06(West 1957).
Hawaii — Hawaii Rev. Laws, tit. 14, § 109-9(1957).

[47] See footnotes 30 and 32, supra.

gain further significance in light of the statutory provisions for the payment of wages to workers in the sheltered shops. There are 10 jurisdictions [48] which provide that shop workers shall receive "suitable wages"; one[49] explains that phrase. Four jurisdictions [50] have various other formulas of payment (to be discussed below). Nine states [51] simply authorize payment of wages to sheltered workers. Since five of these states have declared self-support to be a purpose of the shop,[52] this must be used as a measure of the wage. Colorado does not directly authorize payment of wages (it does specify "remunerative employment"), but nevertheless purports to maintain the shop for purposes of self-support. [53] Three jurisdictions exist which

---

[48]

Indiana	Ind. Stat. Ann., § 22.827(Burns 1956).
Iowa	Iowa Code, § 93.6-(5)(1958).
Massachusetts	Ann. Laws of Mass., Ch. 69, § 14(1953).
New York	N.Y. Unconsol. Laws, § 8776(McKinney 1953).
North Carolina	Gen. Stat. of N.C., § 111-6(1952).
Ohio	Ohio Rev. Code, § 5109.07(Baldwin 1958).
Oregon	Ore. Rev. Stat., § 346.190(1957).
Tennessee	Tenn. Code Ann., § 49.3022(1955).
Virginia	Code of Va., § 63.167(1957).
Wisconsin	Wisc. Stat. Ann., § 47.05-2-(h)(West 1957).

[49] Ore. Rev. Stat., § 346.190-(2)(1957).

[50]

Georgia	Ga. Code Ann., § 99-806(1948).
Missouri	Mo. Rev. Stat., § 209.010(1949).
New Mexico	N.M. Stat. Ann., § 73-23-9(1953).
Hawaii	Hawaii Rev. Laws, tit. 14, § 109-9(1955).

[51]

Arizona	Ariz. Rev. Stat., Ann., § 15-1183-A(1956).
California	Calif. Welf. & Inst. Code, § 3303(1959).
Connecticut	Gen. Stat. of Conn., Ch. 174, § 10-297(1958).
Florida	Fla. Stat., § 409.26(5)(1957).
Illinois	Ill. Ann. Stat., Ch. 23, § 1402(Smith-Hurd 1959).
Maryland	Ann. Code of Md., Art. 30, § 6 (1957).
Michigan	Mich. Comp. Laws, § 393.210(1948).
Utah	Utah Code Ann., § 64-3-24, 64-3-18.5(1959).
Washington	Rev. Code of Wash., § 74.16.190(1957).

[52] California, Connecticut, Georgia, Illinois, Michigan.

[53] Colo. Rev. Stat. Ann., § 16-4-1(1957).

do not authorize payment of wages and do not have other provisions from which it may be inferred that shop workers will receive payment.[54] The one state which in the statute explains the standard of "suitable wages" is Oregon. In fact, Oregon is the only state possessing a definite standard for the calculation of the wages to be paid sheltered workers. The standard is that[55] "the wages to be paid to visually handicapped workers who have completed their training shall be comparable to the wages paid by private industry within Oregon for comparable work. . . ."

Among those states which do make provision for the payment of "suitable wages," Wisconsin alone provides that the shop be maintained so that its workers may become self-supporting.[56]

The four jurisdictions which have other standards for payment of wages are Georgia, Missouri, New Mexico and Hawaii. Georgia provides that[57] the Board "shall have full authority . . . to provide for . . . hours of labor, scale of pay or division of profits. . . ." The discretion of the Board is thus unlimited. Significantly, it does have authority to manage the business as a cooperative venture, or as a combined system of wages and division of profits.

Missouri's statute, not yet implemented, provides[58] that "the duties of the Division of Welfare shall be . . . to compensate the persons so employed in the manner and to the extent that the Division shall deem proper; . . ." Again, the discretion of the agency is unlimited. Workers could be paid in kind rather than in money. Shop workers who quit may be disqualified from unemployment compensation[59] and even denied aid to the blind[60] -- for the statute demands disqualification if the claimant has refused work for any reason. The same provision applies to workers in private sheltered shops.

---

[54] Alabama, Kentucky, Mississippi.

[55] Ore. Rev. Stat., § 346.190-(2)(1957).

[56] Wisc. Stat. Ann., § 47.06(West 1957).

[57] Ga. Code Ann., § 99-806, 99-808(1948).

[58] Mo. Rev. Stat., § 209.010(1949).

[59] Ibid., § 288.050(1957).

[60] Ibid., § 209.050(1949).

The managers of the New Mexico shop are instructed [61] "to pay such compensation to the blind trainees manufacturing such products as may be determined to be reasonable. . . ." "Reasonable" is not further defined, and the discretion of the managers is thus practically unlimited.

The statutes of Hawaii provide [62] that "the bureau may also, whenever it deems proper, aid individual blind persons or groups of blind persons to become self-supporting by employing them in workshops operated exclusively for the blind or in their own homes at such compensation as the bureau may determine their services shall warrant. . . ." On the one hand the employment in the shop is supposed to accomplish self-support; yet on the other hand the department is instructed to pay such wages as it deems their services to warrant. The work of the Hawaii workshop is described by the American Foundation for the Blind [63] as the manufacture of brooms, mops, chair-caning and cocoanut buttons. These endeavors clearly belong to the class of antiquated handcrafts. Since such industries "warrant" a very low wage, the result has traditionally been a meager standard of living.

Statutory Characterization of Workers and Relief Provisions.

Among the 11 states which have statutory authority for workshops but have not yet exercised it, New York [64] describes its potential shop workers as "employees." Missouri refers to them [65] as "persons so employed" or in connection with "employment of blind persons." Others refer to them as "blind persons," "handicapped workers," or "severely handicapped workers." However, this denomination is used in connection with a characterization of workshops as places of

---

[61] N.M. Stat. Ann., § 73-23-9(1953).

[62] Hawaii Rev. Laws, tit. 14, § 109-9(1955).

[63] Directory of Activities for the Blind, American Foundation for the Blind, (1954), p. 32.

[64] N. Y. Unconsol. Laws, § 8776(McKinney 1953).

[65] Mo. Rev. Stat., § 209.010(1949).

remunerative employment."[66]

Of the states that do have functioning workshops, nine[67] describe the workers as "employees." Two others[68] refer to them as "workers." Nine states[69] describe them as "blind persons." Three[70] have special designations for them. Connecticut calls them "inmates" and "beneficiaries";[71] Michigan calls them "beneficiaries," "students," "apprentices," "wards," "wage workers," and "other inmates,"[72] and New Mexico refers to them as "trainees."[73] The terms employed have

---

[66] Pennsylvania — Penna. Stat. Ann., tit. 71, § 610-(m)(Purdom, 1958).
West Virginia — W. Va. Code, § 1872 (14)-(2)(1955).
Wyoming — Wyo. Stat., § 21-303(1957).

[67] Arizona — Ariz. Rev. Stat. Ann., § 15-1183-B(1956).
Massachusetts — Ann. Laws of Mass., Ch. 69, § 14, 15(1953).
North Carolina — Gen. Stat. of N.C., § 111-6(1952).
Ohio — Ohio Rev. Code, § 5109.07(Baldwin 1958).
Oregon — Ore. Rev. Stat., § 346.190-(2)(1957).
Tennessee — Tenn. Code Ann., § 49.3022(1955).
Utah — Utah Code Ann., § 64-3-22, 64-3-24(1953).
Virginia — Code of Va., § 63-167(1950).
Wisconsin — Wisc. Stat. Ann., § 47.05-2-(h)(West 1957).

[68] California — Calif. Welf. & Inst. Code, § 3303, 3332(1959).
Georgia — Ga. Code Ann., § 99-808(1948).

[69] Alabama — Code of Ala., tit. 52, § 534(4a)-a(1955).
Colorado — Colo. Rev. Stat., § 16-4-1(1957).
Illinois — Ill. Ann. Stat., tit. 23, § 1402(Smith-Hurd 1959).
Indiana — Ind. Stat. Ann., § 22.827(Burns 1956).
Kentucky — Ky. Rev. Stat., § 163.036(1958).
Maryland — Ann. Code of Md., Art. 30, § 6(1957).
Mississippi — Miss. Code Ann., tit. 26, § 7265(1953).
Washington — Rev. Code of Wash., § 74.16.180(3)(1957).
Hawaii — Hawaii Rev. Laws, tit. 14, § 109-9(1955).

[70] Connecticut, Michigan, New Mexico.

[71] Gen. Stat. of Conn., Ch. 174, § 10-298, 10-301(1958).

[72] Mich. Comp. Laws, § 393.211, 393.215(1948).

[73] N.M. Stat. Ann., § 73-23-7, 73-23-9(1953).

legal consequences. California, which calls its shop employees "workers,"[74] provides that they are to be considered as state employees for such purposes as those of unemployment compensation, workmen's compensation, and social security benefits.[75] In Michigan, the Attorney General has ruled that the workers are not eligible for workmen's compensation because they are wards of the state.[76] In Hawaii, it was provided (as of 1958) that no shop workers "shall be deemed employees of the territory or of the bureau within the meaning of this or any other chapter, or any act."[77] Sheltered shop workers are expressly exempted from the rights of retirement and of the merit system in the civil service which are provided other state employees in Arizona,[78] Oregon,[79] Tennessee,[80] and California.[81]

In Alabama, the workers in sheltered shops are not eligible for the protection of workmen's compensation because they are employed in a governmental relief agency.[82] In California, it is provided that the shop authorities may deduct from the wages of the worker for group insurance payment,[83] but there is no authority for the employer to share in the expense of group insurance -- which is the customary practice. The Georgia statutes provide that the Board will arrange for the housing and rationing of the workers.[84] Illinois carries the

---

74 Calif. Welf. & Inst. Code, § 3303, 3332(1959).

75 Ibid., § 3306(1959).

76 Ops. Attorney General, Mich., 199(1914).

77 Hawaii Rev. Laws, tit. 14, § 109-9(1955).

78 Ariz. Rev. Stat. Ann., § 15-1183-B(1956).

79 Ore. Rev. Stat., § 346.190-(4)(1957).

80 Tenn. Code Ann., § 148.601(1955).

81 Calif. Welf. & Inst. Code, § 3306(1959).

82 Code of Ala., tit. 55, § 334(1955).

83 Calif. Welf. & Inst. Code, § 3305(West 1956).

84 Ga. Code Ann., § 99-806(1948).

concept of dependency even further in its provisions[85] that shop funds may also be spent for the "comfort, pleasure or amusement of such blind persons."[86] The managers of the state Home for the Blind are given "authority to seek and negotiate piece work contracts from individuals, firms, manufacturers, or corporations for separating, sorting, assembling, packaging, tying, wrapping, or otherwise putting together by hand of small objects." In the same state, the shop workers are expected neither to handle machinery nor to manipulate objects of any appreciable size.

In Massachusetts, the authorities have the statutory right to subsidize the wages of the blind workers, up to a maximum of $52 a week.[87] The same state also has a retirement program for those who have worked 20 years, which grants them either 75 percent of their wages or aid to the blind, whichever is higher.[88] In Michigan, the statutes provide[89] that "the superintendents of the poor" must send to the employment institution their charges who are eligible for admission. They must "cause them to be decently and comfortably clothed," "defray their traveling expenses in going to and returning from said institution," and "provide them with articles of necessity and convenience." They must also pay for their board when the shop is shut down. The superintendents of the poor are required to supply the same help to destitute inmates of the institution who are not county charges. Once workers are in the shop, the statutes provide[90] that "it shall be the duty of the . . . Board of Trustees to prescribe . . . the charges to be required of such workers or the inmates for board, lodging, washing, and other care or services rendered them at the expense of the institution."

---

[85] Ill. Ann. Stat., tit. 23, § 1402(Smith-Hurd 1959).

[86] Ibid.

[87] Ann. Laws of Mass., Ch. 69, § 15(1953).

[88] Mass. Acts & Resolves 1957, Ch. 669.

[89] Mich. Comp. Laws, § 393.216(1948).

[90] Ibid., § 393.210(1948).

Georgia provides [91] that "each worker in [the] factory who is otherwise entitled to share in the benefits provided for dependent blind persons under . . . the Aid to the Blind Act, shall, in addition to the amount received as compensation for his services in said factory, be paid from the Department of Public Welfare the amount paid totally dependent blind persons less half the earnings of said worker."

Conditions of Admission.

Twelve state jurisdictions [92] have no limitation on admission except that the person must be legally blind. The other jurisdictions have varying requirements. Arizona requires that the workers be "adaptable blind persons."[93] California limits admission to [94] "any blind person of suitable age, character, and qualifications who has been a resident of the state for one year prior to his application. . . ." Six more jurisdictions only require that the workers be "suitable blind persons."[95] without further qualification or definition. Georgia allows the Board of Managers to set the requirements for admission.[96] Wisconsin[97] provides that every blind resident of the state who desires to learn a trade may be admitted to the shop. Missouri provides that the blind persons must be "capable of useful labor."[98] Six states require more than these broad, vague, or discretionary conditions for admission to the shops.[99] The most common additional requirement among these shops is that of age. Kentucky requires applicants to be

---

[91] Ga. Code Ann., § 99-808(1948).

[92] Alabama, Delaware, Florida, Illinois, Iowa, Kansas, Kentucky, Massachusetts, New Jersey, Tennessee, Washington, Hawaii.

[93] Ariz. Stat. Ann., § 15-1182-A(1956).

[94] Calif. Welf. & Inst. Code, § 3303(1959).

[95] Colorado, Indiana, New York, North Carolina, Ohio, Virginia.

[96] Ga. Code Ann., § 99-806(1948).

[97] Wisc. Stat. Ann., § 47.06(West 1957).

[98] Mo. Rev. Stat., § 209.010(1949).

[99] Connecticut, Kentucky, Maryland, Michigan, New Mexico, Utah.

adults.[100] The workers are required to be 18 years of age in Connecticut,[101] Maryland,[102] and New Mexico.[103] Michigan provides a complicated standard:[104] "There shall be received in said institution as apprentices or learners, as assisted wards or as wage workers all those blind persons, residents of this state or if minors, whose parents or guardians are residents of this state, between the ages of 18 and 60 years, who are of good moral character and in suitable condition of body and mind to receive the instruction therein afforded or, by their labor or services, to earn the cost of their own support." "Partially blind persons, whose defective sight is such as to prevent them from successfully engaging in those common pursuits wherein the possession of vision is deemed requisite to success, may be admitted to the privileges and benefits of said institution upon such just and reasonable terms as the said Board of Trustees may prescribe.... The Board of Trustees may, in their discretion, admit persons between the ages of 14 and 18 years with the approval of the Board of Control of the Michigan School for the Blind at Lansing, and may in their discretion admit persons over 60 years of age...." Utah has a higher age requirement; those eligible must be 21.[105]

Maryland requires specifically[106] that "said workshop shall be open for the labor and manufacture of all blind citizens of Maryland over 18 years of age, who can give satisfactory evidence of character and of their ability to do the work required of them." Only four of the operative state shops have statutory provisions for others than blind persons to work in them.[107] Arizona permits others to be employed

---

100 Ky. Rev. Stat., § 163.036(1958).

101 Gen. Stat. of Conn., Ch. 174, § 10-301(1958).

102 Ann. Code of Md., Art. 30, § 6(1957).

103 N.M. Stat., § 73-23-1(1953).

104 Mich. Comp. Laws, § 393.215(1948).

105 Utah Code Ann., § 64-3-18(1953).

106 Ann. Code of Md., Art. 30, § 6(1957).

107 Arizona, California, Oregon, Utah.

in the workshops,[108] but requires 75 percent of the workers to be legally blind.[109]

In setting the qualifications for its sheltered workers, California has provided[110] that "any blind person of suitable age, character, and qualifications, who has been a resident of this state for one year prior to his application for admission, and such other physically handicapped persons so qualified as it is practicable to receive therein may be admitted for employment in any center of California Industries for the Blind." There is no guide as to what the legislature considered "practicable."

Oregon is rather more narrow in its acceptance of non-blind workers; it provides[111] that "the Commission, in an emergency on a temporary basis only, may employ such sighted persons as workers in the Oregon Industries for the Blind as are necessary to operate the Industries...." The statutes of Utah provide for employment of other than blind workers with a limiting guide:[112] "The Commission may, in its discretion, employ in its workshops persons with disabilities other than blindness where the aid of such workers may facilitate and supplement the production of the blind employees. Preference in the matter of employment, however, shall always be given to blind persons." This statute thus protects the basic purpose of such shops: namely, the employment of blind persons.

Production, Profits, and Purchases.

Of the total of 389 workshops holding certificates of exemption from minimum wage laws, 85 primarily serve blind persons. According to the Department of Labor,[113] there were in 1958 4,700 blind persons employed in these shops (in 1960 the Labor Department statement

---

[108] Ariz. Rev. Stat. Ann., § 15-1183(1956).

[109] Ibid., § 15-1183-A(1956).

[110] Calif. Welf. & Inst. Code, § 3303(1959).

[111] Ore. Rev. Stat., § 346.190-(3)(1957).

[112] Utah Code Ann., § 64-3-22(1953).

[113] Report from U.S. Department of Labor, Wage and Hour and Public Contracts Divisions, (March, 1958).

is "less than 5,000")[114] who were subject to certificates of exemption; there were others who did earn the statutory minimum wage, but statistics relating to them are unavailable. Fifty-seven of these shops presently belong to the National Industries for the Blind,[115] which employed 3,712 blind persons in 1956.[116] The lowest minimum wage approved for these workers in 1958 was 10 cents an hour, the highest minimum wage was 80 cents per hour, and the average minimum 53 cents an hour.[117] These figures represent the lowest wage permitted in such shops. In construing the Fair Labor Standards Act,[118] the Department of Labor requires that every worker on piece rates be paid the same wage paid to workers in adjacent private industry for the same work.[119] This is not a very valuable standard, since much of the work done in these shops is not carried on by any appreciable segment of private industry -- and in any event is not enforced by the Labor Department.

The most common products of sheltered shops, as surveyed by

---

[114] Testimony of Peter J. Salmon, for the General Committee of Workshops for the Blind (National Industries for the Blind), before the Subcommittee on Labor Standards of the Committee on Education and Labor, U.S. House of Representatives, (May 17, 1960), mimeo., p. 2.

[115] Minutes, Meeting of the General Committee of Workshops for the Blind, National Industries for the Blind, May, 1957, p. 3.

[116] Ibid.

[117] Report from U.S. Department of Labor, Wage and Hour and Public Contracts Divisions, (March, 1958), p. 2.

[118] 41 U.S.C., § 35(1958).

[119] "That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which materials, supplies, articles or equipment are to be manufactured or furnished under said contract." 41 U.S.C., § 35(1958).

the American Foundation for the Blind, are brooms, mops and mats.[120] The products of the shops are sold to the federal government,[121] to state and local governments, and to private markets. No figures are available on the amount of business done by all these shops, but there are data for those shops which sell goods to the federal government. An advisory committee sets the fair market price of goods sold to the federal government,[122] and orders are distributed among the qualified shops by the National Industries for the Blind. Of the 55 shops then qualified as members of the National Industries for the Blind, 54 participated in sales to the federal government in 1956.[123] One hundred million dollars worth of goods were sold to the federal government between January 1, 1939, when the program started, and February 1, 1957. During 1956, $7,118,000 worth of goods were sold to the federal government. On this work, the average wage of the "direct" labor was 92 cents an hour and "indirect" labor was $1.29 an hour.[124] A total of $1,280,000 was earned by shop workers in producing goods for the federal government.[125] In the 55 shops having membership in the National Industries for the Blind, there was an increase of more than $2,000,000 in sales in 1956 over 1955. The total of these wages was $4,571,400.[126] This includes wages for the production of goods for private markets as well ($13,744,000 worth to private markets in 1956).[127] In all, 55 different kinds of goods were sold to the federal

---

120 Directory of Activities for the Blind in the United States and Canada, American Foundation for the Blind, (1954).

121 41 U.S.C., § 48(1958).

122 Ibid., § 47(1958).

123 Minutes, Meeting of the General Committee of Workshops for the Blind, National Industries for the Blind, May, 1957, p. 3.

124 Ibid., p. 4.

125 Ibid., p. 44.

126 Ibid.

127 Ibid., p. 2.

government.[128]

There are 22 states which have statutes requiring the purchase by the state of blind-made goods.[129] A questionnaire sent out by the National Industries for the Blind, to which 18 shops responded, revealed that they had sold a total of $700,000 worth of goods to the state governments in 1956.[130]

Thirteen states[131] have statutory lists of products; Michigan is the only one of these without a "use law" for blind-made products as

---

[128] Minutes, Meeting of the General Committee of Workshops for the Blind, National Industries for the Blind, May, 1957, p. 43.

[129]

Alabama	Code of Ala., tit. 52, § 534(4b), 534(4c)(1955).
Arizona	Ariz. Rev. Stat. Ann., § 15-1184(1956).
California	Calif. Welf. & Inst. Code, § 3364, 3365(1959).
Colorado	Colo. Stat. Ann., § 130-3-7(1953).
Delaware	Del. Code Ann., tit. 31, § 2115(1958).
Florida	Fla. Stat. Ann., § 409.262(2)(1957).
Georgia	Ga. Code Ann., § 99-806(1948).
Indiana	Ind. Stat. Ann., § 22-811(Burn 1959).
Kansas	Gen. Stat. of Kans., § 75-3321(supp. 1957).
Louisiana	La. Rev. Stat., R.S. 46:335(West 1951).
Massachusetts	Ann. Laws of Mass., Ch. 69, § 25(1953).
New Mexico	N.M. Stat., § 73-23-8(1953).
New York	N.Y. State Fin. Laws, § 175b(McKinney 1959).
Ohio	Ohio Rev. Code, § 125.08(Baldwin 1958).
Oregon	Ore. Rev. Stat., § 346.220(1957).
Pennsylvania	Penna. Stat. Ann., tit. 71, § 639.1(Purdom 1958).
South Carolina	Code of Laws of S.C., § 1-28, 1-29(1952).
South Dakota	Sess. Laws of S.D., Ch. 493(1953).
Texas	Ann. Rev. Stat. of Tex., Art. 664-3, § 13(1959).
Utah	Utah Code Ann., § 63-2-42, 63-2-43(1953).
Virginia	Code of Va., § 2-259.2(1958).
Wisconsin	Wisc. Stat. Ann., § 15.58(West 1957).

[130] Minutes, Meeting of the General Committee of Workshops for the Blind, National Industries for the Blind, May, 1957, p. 23.

[131] Alabama, California, Delaware, Florida, Georgia, Louisiana, Massachusetts, Michigan, New Mexico, New York, Pennsylvania, South Carolina, Utah.

well. Thirteen states mention brooms,[132] 12 mention mops,[133] six list chair caning,[134] four include rugs,[135] four list mats,[136] four list mattresses,[137] three include brushes,[138] three specify mattress repair,[139] one mentions sheets,[140] one lists whisks,[141] one itemizes office and school furniture[142] and 12 expressly permit the purchase or manufacture of other commodities.[143]

Seventeen states purchase goods from state-operated shops,[144]

---

[132] Alabama, California, Delaware, Florida, Georgia, Louisiana, Massachusetts, Michigan, New Mexico, New York, Pennsylvania, South Carolina, Utah.

[133] Alabama, California, Delaware, Florida, Georgia, Louisiana, Massachusetts, New Mexico, New York, Pennsylvania, South Carolina, Utah.

[134] Alabama, Delaware, Massachusetts, Michigan, South Carolina, Utah.

[135] Delaware, Florida, Michigan, New Mexico.

[136] Delaware, Florida, New Mexico, Utah.

[137] Alabama, Georgia, Louisiana, South Carolina.

[138] Georgia, Louisiana, Utah.

[139] Louisiana, Massachusetts, South Carolina.

[140] Alabama.

[141] Michigan.

[142] Georgia.

[143] Alabama, California, Delaware, Florida, Georgia, Massachusetts, Michigan, New Mexico, New York, Pennsylvania, South Carolina, Utah.

[144] Alabama, Arizona, California, Colorado, Delaware, Georgia, Indiana, Kansas, Massachusetts, New Mexico, Ohio, Oregon, South Carolina, Texas, Utah, Virginia, Wisconsin.

12 purchase the goods of home industries,[145] and eight purchase the goods of private, non-profit shops.[146] Only six purchase the goods of private individuals,[147] and in only two of these are they permitted to operate without the supervision of an agency in order to qualify.[148] But in the eight shops which purchase goods from the private, non-profit shops, three permit purchases only from these private, non-profit shops.[149] All three of these states have home industry programs. Not only does New York purchase exclusively from the private shops, but the law provides that only non-profit shops incorporated under New York law are given the preference.[150] Some 50 out of the 85 shops for the blind are found in these three states (Florida, New York, and Pennsylvania).

Several of the "use laws" have special features worth particular mention. Although several states provide varying penalties for state officers who do not comply with the preferential purchasing of blind-made products, Alabama first provides[151] that "no department, institution or agency shall be allowed to evade the intent and meaning of this article by slight variations from standards adopted by the adult blind department of the Alabama Institute for Deaf and Blind, when the articles produced are manufactured by it, in accordance with its standards and are reasonably adapted to the actual need of such departments, institutions, agencies, or political subdivisions." The law goes on to state that any officer who continues to disregard the preference after

---

[145] Alabama, Arizona, Indiana, Kansas, Louisiana, Massachusetts, Ohio, Oregon, South Carolina, Texas, Utah, Virginia.

[146] Alabama, Arizona, Florida, Louisiana, New York, Pennsylvania, South Carolina, Texas.

[147] Arizona, Louisiana, Oregon, South Carolina, South Dakota, Texas.

[148] Louisiana, South Dakota.

[149] Florida, New York, Pennsylvania.

[150] N. Y. State Fin. Law, § 175b(1959).

[151] Code of Ala., tit. 52, § 534(4c)(1955).

warning from the governor can be suspended or dismissed from office for malfeasance.[152] No other state has adopted such a rigorous enforcement provision.

In Louisiana, the Department of Public Welfare arranges the delivery of blind-made products to the state and sets the sales price of the goods of individuals and workshops.[153] The shops are permitted to set the price at not more than 40 percent above the "fair market price," and the individual blind person may own and operate his own shop and sell to the state without being subject to having his business supervised by the state agency.

In South Dakota, the state purchases the goods of its blind residents and allows consideration for cost of delivery.[154] South Dakota also does not require that these individuals be under the supervision of its state agency. Thus, in these two states, the individual is his own boss. He can select his own products for production, develop his own private markets, and receive the benefit of a preference to sell his goods to the state if the state can use them and if they meet the quality and quantity standards of the state.

Conclusion.

From this survey of the statutory provisions of the states governing their sheltered workshops, several conclusions clearly emerge. The three distinctive functions of sheltered shops -- vocational rehabilitation, medical therapy, and remunerative employment -- are rarely distinguished in the statutes. Instead the workshop is commonly conceived as a combination of two, or even all three, of these functions -- in effect, as an all-purpose solution to the numerous and varied problems confronted by the blind. In what is perhaps their most characteristic form these statutes simply perpetuate a relic of the past: a vague combination of the workhouse, the almshouse, the factory and the asylum, carefully segregated from "normal" competitive society and administered by a custodial staff armed with

---

[152] Code of Ala., tit. 52, § 534(4d)(1955).

[153] La. Rev. Stat., R.S. 46:335(West 1951).

[154] Sess. Laws of S.D., Ch. 493 (1953).

sweeping discretionary authority. In many cases their responsibility for the client of their services is so broad as to appear to embrace the functions of nearly all other community agencies and groups. In the administration of moral uplift and regeneration they assume in effect the role of the church; in the provision of intellectual instruction they exercise the function of the schools; in the enforcement of discipline and the power of punishment they resemble a penal institution; and in their emphasis upon group activities of a social, recreational and cultural nature they take on the characteristics of a service club or voluntary association. Over and above these disparate if not conflicting responsibilities, the assumption of which is surely of doubtful propriety, the sheltered workshop typically furnishes some form of work experience to its participants, generally for wages and often directed toward the objective of self-support. But few state laws differentiate adequately or clearly among the purposes which these activities may be supposed to serve.

On the basis of our study it is not excessive to conclude that the sheltered workshop as it exists within the states today is a welfare "catch-all" which means all things to all men, and therefore possesses no distinctive and specific characteristic upon which all may agree. Indeed, by their failure to distinguish among the three separate functions available to them, the workshops of the states must be adjudged to be failures in all three. The nature and extent of their failure with respect to each of these functions may be briefly stated.

1. Vocational Rehabilitation. There are dangers and difficulties involved in the use of sheltered workshops in any program of rehabilitation. Most serious of all are those attending the support of workshops within the public program of vocational rehabilitation (Public Law 565). In their traditional, and still perhaps their most characteristic, role as permanent employment outlets for the disabled, the sheltered shops are incompatible with the purposes and goals of modern vocational rehabilitation. Under no circumstances should they be utilized as "dumping grounds" for clients of vocational rehabilitation, such as the blind, for whom normal job placement is a difficult but essential prerequisite to proper rehabilitation. Vocational rehabilitation agencies should be discouraged from regarding the option of sheltered employment as a "closure" for their clients, however convenient such a solution may be in terms of economy and rapid turnover of the caseload.

Because of their customary role as sheltered (i.e., segregated, covered and noncompetitive) employment retreats, the social and

psychological environment of the workshops is often not conducive to the paramount objective of vocational rehabilitation: that of restoring the disabled person to a vocational status of normality and equality. Where "feasible" rehabilitants are thrown together with the "non-feasible"; where working facilities and methods are geared to outmoded and unproductive handicrafts such as broom-making and chair-caning, and where the working atmosphere is commonly one of defeatism if not of despair, the overriding purposes of modern vocational rehabilitation cannot be served but only undermined.

Apart from psychological and social factors, the economics of sheltered workshops equally tend to militate against their successful adaptation, as presently constituted, to vocational rehabilitation goals. First, they are in most cases at least partially subsidized, and so removed from the normal incentives and competition of ordinary industry. Second, insofar as economic considerations enter, workshop managers are tempted to retain their ablest and most productive workers permanently rather than risk a financial loss by graduating them into normal employment. Finally, the economic and working conditions within sheltered shops are commonly far below those in normal industry. The existence of such conditions strongly argues against the public support of sheltered workshops, under any circumstances, as training centers for vocational rehabilitation clients.

Finally, the historic associations of sheltered workshops with the workhouse, almshouse, asylum and church of the middle ages have left conspicuous traces upon the majority of present-day shops, giving them often the character of agencies for moral redemption rather than that of means to the restoration of productive capacities. Institutions thus motivated are unlikely to be equally qualified or equipped in the mundane areas of vocational guidance, training, and selective placement.

2. Terminal Employment. With respect to the function of providing permanent (or "terminal") remunerative employment for the blind and severely disabled, sheltered workshops have failed to fulfill their responsibility to their employees. Indeed, they have for the most part sought to avoid the normal obligations of employers through exemption from the laws fixing minimum standards of employment and working conditions. Workers in sheltered shops deserve and require the same protection of their rights as do the workers in other industries: specifically, with respect to wages, hours, vacations, sick leave, labor-management relations, and the like. However, blind workshop employees have never received, and do not now receive,

such protection. Not only do wages fail to meet the cost of living; they fail to meet the minimum requirements of the Fair Labor Standards Act, from which sheltered shops have in fact been explicitly exempted. Nor can blind workshop employees hope to improve conditions by their own efforts; for one thing, they are not organized into unions, and for another thing (as noted earlier) they have been denied the collective bargaining protection of the National Labor Relations Act. Finally, many of these employees do not have entitlement to workmen's compensation or social security privileges, and most are denied the benefits of unemployment compensation. In short, blind workers in sheltered employment are virtually in the position of wards, without legal rights or recourse, and reduced to an abject dependency upon the good will and discretion of their employers. In such circumstances, it is conservative understatement to say that sheltered workshops have failed to meet the conditions of employment to which American workers are entitled and accustomed.

3. Medical Therapy. On the basis of our survey of statutory provisions, the least plausible of all claims for sheltered workshops is that they have provided or can provide adequate facilities for medical and therapeutic assistance. For such facilities to be efficient, they should be completely divorced from considerations of remunerative employment on the one hand and of vocational training on the other. The purposes of therapy are, of course, not economic but medical and psychological in character. The very cases for whom such assistance is the primary need -- i.e., the multiply and totally disabled -- are those incapable of self-sufficient employment, let alone of vocational preparation for return to normal occupations. The statutes which we have examined plainly display the tendency of sheltered shops to become terminal places of employment in which so-called "unemployables" may find a drudge's niche at the workbench. It goes without saying that something more than the stereotyped "blind trades" of weaving and chair caning is required to serve a genuine therapeutic purpose and furnish healthy incentives to personal adjustment. The clinging heritage of the almshouse and asylum, into which the supposed derelicts of society were dumped and forgotten, remains sufficiently in evidence in present-day workshops to vitiate the prospect of their constructive use for medical and therapeutic purposes. What the severely disabled clients of such services most clearly and urgently need is a form of productive endeavor carefully adjusted to their unique individual circumstances and individually designed to make constructive use of their enforced leisure. Such a therapeutic enterprise must be in the fullest sense "client-centered" rather than geared to industrial markets, economic considerations, or the convenience of

traditional trades and handicrafts.

This is not to say, of course, that the three separate functions which sheltered workshops have purported to serve -- those of vocational rehabilitation, of employment, and of therapy -- have no place in modern programs of health and welfare. For the blind and other disabled persons in the productive years of life, vocational rehabilitation is the essential and overriding need; but its purposes of occupational guidance, training, and competitive job placement cannot be met by the sheltered workshop. If, either within or outside the vocational rehabilitation process, there is need for "vocational adjustment" or therapeutic centers, that need should be met not by the sheltered shop but by special rehabilitation facilities such as those authorized by Public Law 565 (where they are carefully distinguished from workshops). "Rehabilitation facility," the law states, "means a facility operated for the primary purpose of assisting in the rehabilitation of disabled persons -- (1) which provides one or more of the following types of services: (A) testing, fitting, or training in the use of prosthetic devices; (B) prevocational or conditioning therapy; (C) physical or occupational therapy; (D) adjustment training; or (E) evaluation or control of special disabilities; or (2) through which is provided an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision. . . ." Finally, there is no doubt that a genuine need exists for permanent noncompetitive employment of certain categories of the severely handicapped, but that need also (as we have seen above) is not met by sheltered workshops of the type described by the governing statutes of the states.

In summary, the fundamental failure of sheltered workshops for the blind and disabled lies in their indiscriminate intermingling of functions and purposes which are demonstrably incompatible if not mutually exclusive. It is not too much to conclude, on the basis of the statutory evidence, that the sheltered workshop has become an anachronism which America, if it is to practice successfully the democratic welfare philosophy it professes, can ill afford to perpetuate.

HV1711
T
c. 4

TenBroek, Jacobus
Character and function of sheltered workshops for the blind.

Date Due			

Bro-Dart INDUSTRIES
NEWARK 5, N. J.
LOS ANGELES 25, CALIF.
TORONTO 6, CANADA
Made in U.S.A.